IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

===

R.S.A. No. 182 of 2006

Date of decision: August 11, 2006

Anguri Devi

--- Appellant

Versus

Madan and others

--- Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Akshay Kumar Goel, Advocate for the appellant.

JUDGMENT

This appeal at the instance of one of the defendants is directed against the judgment and decree of the first appellate court whereby appeal filed by the appellant against the trial court judgment and decree was dismissed.

Brief facts of the case are that the plaintiffs filed a suit for declaration to the effect that they along with defendant No.1 were joint owners in possession of 11/45th share each and defendant Nos. 2 to 7 were joint owners in possession of 1/50th + 11/450th i.e. 2/45th share each in land measuring 123 Kanals 9 Marlas situated in the revenue estate of village Siwara, Tehsil Bawanikhera, District Bhiwani. Further declaration was also sought that mutation Nos. 1211 and 1506 and decree passed in civil suit No. 226 of 1996 titled as "Rattan Singh Vs. Smt. Shanti etc." were wrong, illegal, null and void and all revenue entries were liable to be corrected accordingly with consequential relief of permanent injunction restraining the defendants from partitioning the suit land on the basis of wrong entries and also from alienating and creating any charge over the property in dispute in any manner. Suit was contested by the defendants except defendant No.2 who was proceeded against ex parte. The averments made by the plaintiffs were controverted by the contesting defendants.

Trial court framed the following issues:

1- Whether the land, in dispute is coparcenary property of the plaintiffs and defendant no.1? OPP

2- Whether the plaintiffs and defendant no.1 are joint owners in joint possession to the extent of 11/45 share and the defendants no. 2 to 7 are joint owners in joint possession to the extent of 12/45 share? OPP

3- Whether the impugned judgment and decree passed in civil suit no. 226 of 1996, titled Rattan Singh Versus Smt. Shanti, dated 6.4.96 are wrong, illegal, null and void, and not binding on the rights of the plaintiffs? OPP

4- Whether the plaintiffs are entitled to get the defendants restrained from getting the land partitioned? OPP

5- Whether the suit is time barred? OPD

6- Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD

7- Whether the plaintiffs have no cause of action to file the present suit? OPD

8- Relief.

Trial court held that the land in dispute was coparcenary property of the parties. Issues Nos. 1, 2, 3 and 7 were answered in favour of the plaintiffs. Issues No. 4, 5 and 6 were decided against the defendants. The suit was found not to be barred by limitation as alleged on behalf of the defendants. The defendants could not prove that the plaintiffs had no cause of action. On the basis of these findings the suit was decreed by the trial court. Appeal preferred against the decree of the trial court was dismissed by the District Judge, Bhiwani.

I have heard learned counsel for the appellant and gone through the record. The findings recorded by both the courts below are concurrent findings of fact based on appreciation of evidence oral as well as documentary and do not call for interference by this Court in second appeal. Learned counsel for the appellants could not pin-point any illegality or perversity in the said findings. Nothing was shown that the said findings are either based on no evidence or there was any mis-reading or mis-appreciation of evidence while recording the same. No question of law, much less a substantial question of law arises in this appeal for the consideration of this Court. The appeal is consequently dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 11, 2006
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